

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20, SUBREGION 37

HTH CORPORATION, PACIFIC BEACH)
CORPORATION, and KOA)
MANAGEMENT, LLC, a SINGLE)
EMPLOYER, d/b/a PACIFIC BEACH)
HOTEL)
and)
HTH CORPORATION d/b/a PACIFIC)
BEACH HOTEL,)
and)
KOA MANAGEMENT, LLC d/b/a)
PACIFIC BEACH HOTEL)
and)
PACIFIC BEACH CORPORATION d/b/a)
PACIFIC BEACH HOTEL)
and)
INTERNATIONAL LONGSHORE AND)
WAREHOUSE UNION, LOCAL 142)
(2011-022).)
_____)

CASES 37-CA-7311
37-CA-7334
37-CA-7422
37-CA-7448
37-CA-7458
37-CA-7476
37-CA-7478
37-CA-7482
37-CA-7484
37-CA-7488
37-CA-7537
37-CA-7550
37-CA-7587
CASE 37-CA-7470
CASE 37-CA-7472
CASE 37-CA-7473

**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,
LOCAL 142'S EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND**

**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142'S
BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND**

APPENDICES 1-9

CERTIFICATE OF SERVICE

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Longshore and Warehouse Union Local 142

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**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION
LOCAL 142's EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, as amended, the International Longshore and Warehouse Union Local 142 ("ILWU," "Local 142," or "Union"), hereby excepts to the Administrative Law Judge's Supplemental Decision on Remand dated October 14, 2011 as follows for the reasons stated herein and as more fully argued in the supporting brief:

1. "On September 7, 2011 all parties filed briefs regarding the necessity for opening the record to address the issue remanded by the Board. I find it is unnecessary to reopen the record because no additional facts need be elicited in order to decide the issue on remand." (Exh. 2-2, lines 4-7). The ILWU excepts as a question of procedure.

2. "[A] make-whole remedy is not warranted under the circumstances of this case." (Exh. 2-1). The Decision is in error of fact and law.

3. "Judge Kennedy did not provide a remedy for this finding of unilateral closure [Conclusion of Law No. 15 that Respondents unilaterally and without bargaining with the Union closed the Shogun Restaurant in violation of Section 8(a)(5) and (1) of the Act]. The ILWU excepts as to errors of fact and law. For the same reasons, the ILWU excepts as an error of law that "because no remedy was set out in the underlying decision, it is reasonable that Respondents did not file an exception to Judge Kennedy's conclusion of law." (Exh. 2-4, lines 24-26).

4. "[T]he amended consolidated complaint, as conformed, does not allege unilateral closure of Shogun Restaurant nor does it allege unlawful layoff of the Shogun

Restaurant employees.” (Exh. 2-2, line 9-11). The Decision is in error of fact and law. For the same reasons the ILWU excepts to the statement that ILWU’s cross exceptions were “the first indication that anyone sought a remedy for the closure” (Exh. 2-3, lines 11-12), and “it is clear that the parties knowingly proceeded throughout a lengthy trial without any allegation regarding the Shogun Restaurant closure (Exh. 2-4, lines 36-37), and “[the remedy] was purposefully not litigated.” (Exh. 2-4, line 39).

5. “Mr. Vasconcellos made no statement at all, either in agreement or disagreement, regarding counsel for the Acting General Counsel’s statement that no remedy was sought for individuals affected by closure of the Shogun Restaurant. Further, at no time during the hearing did the union assert that a remedy was requested for closure of the Shogun Restaurant.” (Exh. 2-2, lines 39-43). The Supplemental Decision on Remand is in error of fact and law.

6. “Finally, counsel [for the Acting General Counsel] explains that the closure of the Shogun Restaurant was covered in testimony at the hearing only to the extent that it demonstrated that Respondents continued to be the employer of the employees even while PBH Management LLC managed the hotel. My review of the pleadings and transcript indicates they are consistent with these assertions.” (Exh. 2-3, lines 33-37). ILWU excepts as to error of fact and law.

7. “[I]n my view, Holder Construction Co., 327 NLRB 326 (1998), is not distinguishable. . . . Counsel for the Union did not disagree.” (Exh. 2-4, lines 17, 22-23). ILWU excepts as error of law. For the same reason ILWU excepts as error of fact and law that “the Union, [acquiesced] to the disclaimer of a remedy at hearing” (Exh. 2-4, lines 28-29), and the

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing document was duly served upon the following person by electronic filing and by depositing in the U.S. Mail, postage pre-paid on this date:

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